

Article 3.

Purchases and Contracts.

**§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.**

(a) Policy. – It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. – Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services, every local school administrative unit, and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars (\$500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

- (1) Except as provided in subdivision (1a) of this subsection, a business in one of the categories above means one:
  - a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
  - b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.
- (1a) A "disabled business enterprise" means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.
- (1b) A "nonprofit work center for the blind and the severely disabled" means an agency:
  - a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;

- b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
  - c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.
- (2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a. through d.
  - (3) A disabled person means a person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

(c) The Department of Administration shall compile information on small and medium-sized business participation in State contracts subject to this Article and report the information as provided in subsection (d) of this section. The report shall analyze (i) contract awards by business size category, (ii) historical trends in small and medium-sized business participation in these contracts, and (iii) to the extent feasible, participation by small and medium-sized businesses in the State procurement process as dealers, service companies, and other indirect forms of participation. The Department may require reports on contracting by business size in the same manner as reports are required under subsection (b) of this section.

(d) The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

(d1) Repealed by Session Laws 2007-392, s. 1, effective October 1, 2007.

(e) In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 692, s. 2; 1989 (Reg. Sess., 1990), c. 1051, s. 1; 1993, c. 252, s. 1; 1995, c. 265, s. 2; 1999-20, s. 1; 1999-407, s. 1; 2003-147, s. 6; 2004-203, s. 72(b); 2005-270, s. 1; 2007-392, s. 1.)

### **§ 143-48.1. Medicaid program exemption.**

(a) This Article shall not apply to any capitation arrangement or prepaid health service arrangement implemented or administered by the North Carolina Department of Health and Human Services or its delegates pursuant to the Medicaid waiver provisions of 42 U.S.C. § 1396n, or to the Medicaid program authorizations under Chapter 108A of the General Statutes.

(b) As used in this section, the following definitions apply:

- (1) "Capitation arrangement" means an agreement whereby the Department of Health and Human Services pays a periodic per enrollee fee to a contract entity that provides medical services to Medicaid recipients during their enrollment period.

- (2) "Prepaid health services" means services provided to Medicaid recipients that are paid on the basis of a prepaid capitation fee, pursuant to an agreement between the Department of Health and Human Services and a contract entity.

(c) The Department of Health and Human Services shall: (i) submit all proposed contracts for a capitation arrangement or prepaid health services, as defined by this section, that exceed one million dollars (\$1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all agreements or contracts to be awarded by the Department under this section a standard clause which provides that the State Auditor and internal auditors of the Department may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose. (1993, c. 529, s. 7.4; 1997-443, s. 11A.118(a); 2010-194, s. 20.2; 2011-326, s. 15(v).)

**§ 143-48.2. Procurement program for nonprofit work centers for the blind and the severely disabled.**

(a) An agency subject to the provisions of this Article for the procurement of goods may purchase goods directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

- (1) The purchase may not exceed the applicable expenditure benchmark under G.S. 143-53.1.
- (2) The goods must not be available under a State requirements contract.
- (3) The goods must be of suitable price and quality, as determined by the agency.

(b) An agency subject to the provisions of this Article for the procurement of services may purchase services directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

- (1) The services must not be available under a State requirements contract.
- (2) The services must be of suitable price and quality, as determined by the agency.

(c) The provisions of G.S. 143-52 shall not apply to purchases made pursuant to this section. However, nothing in this section shall prohibit a nonprofit work center for the blind and severely disabled from submitting bids or making offers for contracts under G.S. 143-52.

(d) For the purpose of this subsection, a "nonprofit work center for the blind and severely disabled" has the same meaning as under G.S. 143-48. (1995, c. 265, s. 3; 1999-20, s. 1.)

**§ 143-48.3. Electronic procurement.**

(a) The Department of Administration shall develop and maintain electronic or digital standards for procurement. The Department of Administration shall consult with the Office of the State Controller, the Department of Information Technology, the Department of State Auditor, the Department of State Treasurer, The University of North Carolina System Office, the Community Colleges System Office, and the Department of Public Instruction.

(a1) The Department of Administration shall comply with the State government-wide technical architecture for information technology, as required by the State Chief Information Officer.

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Department of Information Technology may, upon request, provide to all State agencies, universities, and community colleges, training in the use of the electronic procurement system.

(c) The Department of Administration shall utilize the Department of Information Technology as an Application Service Provider for an electronic procurement system. The Department of Information Technology shall operate this electronic procurement system, through State ownership or commercial leasing, in accordance with the requirements and operating standards developed by the Department of Administration and the financial reporting and accounting procedures of the Office of the State Controller.

(d) This section does not otherwise modify existing law relating to procurement between The University of North Carolina, UNC Health Care, community colleges, and the Department of Administration.

(e) The Board of Governors of The University of North Carolina shall exempt North Carolina State University and The University of North Carolina at Chapel Hill from the electronic procurement system authorized by this Article until May 1, 2003. Each exemption shall be subject to the Board of Governors' annual review and reconsideration. Exempted constituent institutions shall continue working with the North Carolina E-Procurement Service as that system evolves and shall ensure that their proposed procurement systems are compatible with the North Carolina E-Procurement Service so that they may take advantage of this service to the greatest degree possible. Before an exempted institution expands any electronic procurement system, that institution shall consult with the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology. By May 1, 2003, the General Assembly shall evaluate the efficacy of the State's electronic procurement system and the inclusion and participation of entities in the system.

(f) Any State entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity subject to this section shall notify the Department of Information Technology by January 1 of each year of its intent to participate in the North Carolina E-Procurement Service. (2000-67, s. 7.8; 2000-140, ss. 95(a), 95(b); 2001-424, s. 15.6(b); 2001-513, s. 28(a); 2002-126, ss. 27.1(a), 27.1(b), 27.1(c); 2003-147, s. 7; 2004-129, ss. 40, 40A, 41; 2004-203, s. 72(b); 2015-241, s. 7A.4(o); 2018-12, s. 15.)

#### **§ 143-48.4. Statewide uniform certification of historically underutilized businesses.**

(a) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

- (1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in G.S. 143-128.4, for use by

State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.

- (2) Adopt rules and procedures for statewide uniform certification of historically underutilized businesses.
- (3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(b) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(c) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2007-392, s. 2; 2009-243, s. 2.)

#### **§ 143-48.5. Contractors must use E-Verify.**

No contract subject to the provisions of this Article may be entered into unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (2013-418, s. 2(d).)

#### **§ 143-48.6. Personal services contracts subject to Article.**

(a) Requirement. – Notwithstanding any other provision of law, personal services contracts for executive branch agencies shall be subject to the same requirements and procedures as service contracts.

(b) Personal Services Contract Defined. – For purposes of this section, the term "personal services contract" means a contract for services provided by a professional individual as an independent contractor on a temporary or occasional basis, but does not include, and nothing in this Article shall apply to, the engagement of experts or expert witnesses who are to be involved in the planning, prosecution, or defense of any litigation, by the Department of Justice, the Governor, State agencies, or institutions.

(c) Rules Required. – The Department of Administration shall adopt rules consistent with this section. (2015-241, s. 26.2(a); 2015-264, s. 74(a).)

#### **§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration has the power and authority, and it is the Secretary's duty, subject to the provisions of this Article:

- (1) To canvass sources of supply, including sources of goods with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all goods required by the State government, or any of its departments, institutions or agencies under competitive bidding or other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement

method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids. For purposes of this Article, the term "goods" includes, without limitation, all commodities, supplies, materials, equipment, and other tangible personal property.

- (2) To establish and enforce specifications which shall apply to all goods and services to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.
- (3) To purchase or to contract for, by sealed, competitive bidding or other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids, all services of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.
- (3a) To notify the Attorney General of pending contracts for contractual services exceeding a cost of five million dollars (\$5,000,000) and that are not otherwise excepted by this subdivision. Upon notification, the Attorney General shall assign a representative from within the office of the Attorney General, the Contract Management Section of the Division of Purchase and Contract, Department of Administration, or other qualified counsel to assist in negotiation for the award of the contract. It is the duty of the representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. An attorney from within the office of the Attorney General shall review all contracts and drafts of contracts, and the office shall retain copies for a period of three years following the termination of the contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 means work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. This subdivision does not apply to contracts entered into or to be entered into as a result of a competitive bidding process. In order to be valid, any contract for services reviewed pursuant to this subdivision must include the signature and title of the attorney designated from within the office of the Attorney General to review the contract. If the contract commences without the required signature, the State has the right to terminate the contract, and the other party or parties to the contract shall only be entitled to the value of all services provided to the State prior to

the termination. The Secretary is not required to notify the Attorney General for the appointment of a representative for any contracts for contractual services to be entered into by the constituent institutions of The University of North Carolina pursuant to G.S. 114-8.3(b), or for contracts to be entered into by the Department of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do so by the General Counsel of The University of North Carolina or the General Counsel of the Department of State Treasurer, respectively.

- (4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.
- (5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.
- (6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are described as nonprofit postsecondary educational institutions in G.S. 116-280 and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of goods and services under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract.
- (7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services.
- (8) To establish and maintain a procurement card program for use by State agencies, community colleges, and nonexempted constituent institutions

of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Department of Information Technology. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC System Office, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Department of Information Technology. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC System Office, the Community Colleges System Office, the Department of Public Instruction, and the Department of Information Technology.

- (9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or institution may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees or performance.
- (10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.
- (11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.
- (12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.
- (13) Repealed by Session Laws 2013-234, s. 2, effective October 1, 2013, and applicable to contracts entered into on or after that date.
- (14) To work in conjunction with the Office of State Human Resources to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.



- (15) To work in conjunction with the Office of State Human Resources, the Division of Purchase and Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. Certification in the contract management training program is mandatory for all State employees who are responsible for awarding contracts or monitoring contract compliance. The program shall be administered by the Office of State Human Resources.
- (16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by June 30, 2014.
- (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733; 1979, c. 759, s. 1; 1983, c. 717, ss. 60, 62; 1985 (Reg. Sess., 1986), c. 955, ss. 79-82; 1989, c. 408; 1991, c. 358, s. 1; 1993, c. 256, s. 1; 1995, c. 265, ss. 1, 5; 1996, 2nd Ex. Sess., c. 18, s. 24.17; 1997-443, s. 11A.118(a); 1999-20, s. 1; 2000-67, s. 10.9(a); 2001-424, s. 15.6(a); 2001-424, s. 15.6(d); 2001-513, s. 28(b); 2003-147, s. 8; 2004-203, s. 72(b); 2005-213, s. 2; 2006-203, s. 82; 2010-194, s. 21; 2011-145, s. 9.18(h); 2011-326, s. 15(w); 2011-338, s. 1; 2013-234, s. 2; 2013-382, s. 9.1(c); 2015-241, s. 7A.4(p); 2017-102, s. 42.1; 2018-5, s. 31.1(a); 2018-12, s. 16.)

**§ 143-49.1. Purchases by volunteer nonprofit fire department and lifesaving and rescue squad.**

In consideration of public service, any volunteer nonprofit fire department, lifesaving and rescue squad in this State may purchase gas, oil, and tires for their official vehicles and any other materials and supplies under State contract through the Department of Administration, and may purchase surplus property through the Department of Administration on the same basis applicable to counties and municipalities.

The Department of Administration shall make its services available to these organizations in the purchase of such supplies under the same laws, rules and regulations applicable to nonprofit organizations as provided in G.S. 143-49. (1973, c. 442; 1991, c. 199.)

**§ 143-50. Certain contractual powers exercised by other departments transferred to Secretary.**

All rights, powers, duties and authority relating to State printing, or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any State department, institution or agency under the several statutes relating thereto, are hereby transferred to the Secretary of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Secretary of Administration under the provisions of this Article. (1931, c. 261, s. 3; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

**§ 143-50.1. Division of Purchase and Contract; Contract Management Section.**

(a) The Contract Management Section (CMS) is established in the Division of Purchase and Contract, Department of Administration. The CMS shall include legal counsel with the duties and responsibilities included in this section.

(b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed one million dollars (\$1,000,000), the CMS shall:

- (1) Participate and assist in the preparation of all proposed solicitations, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.
- (2) Interpret proposed contract terms and advise the Secretary or the Secretary's designee of the potential liabilities to the State.
- (3) Review all proposed contracts to ensure that the contracts:
  - a. Are in proper legal form.
  - b. Contain all clauses required by law.
  - c. Are legally enforceable.
  - d. Require performance that will accomplish the intended purposes of the proposed contract.

The review and evaluation required by this subsection does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(c) With respect to proposed contracts for services that exceed five million dollars (\$5,000,000), the CMS shall perform the duties required under G.S. 143-49(3a).

(d) The CMS shall:

- (1) Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions.
- (2) Advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities.
- (3) Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and other matters as directed by the State Purchasing Officer.
- (4) Assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

(e) The Department of Administration shall adopt procedures for the record keeping of the information provided by State agencies and that has been received by the Secretary

or the Secretary's designee pursuant to G.S. 114-8.3(c). The Department shall keep the records, and shall include a log with information that provides identification of individual contracts and where the contract documents are located. The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide additional information that may be required to identify the individual contracts.

(f) The CMS shall consist of personnel designated by the Secretary and perform other functions as directed by the Secretary that are not inconsistent with this section. (2013-234, s. 3.)

**§ 143-51. Reports to Secretary required of all agencies as to needs and purchases.**

(a) It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, estimates of all goods and services needed and required by such department, institution or agency for such periods in advance as may be designated by the Secretary of Administration.

(b) In addition to the report required by subsection (a) of this section, all departments, institutions, or agencies of the State government shall furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, actual expenditures for all goods and services needed and required by the department, institution, or agency for such periods after the expenditures have been made as may be designated by the Secretary of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 1; 2011-338, s. 2.)

**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts; cost plus percentage of cost contracts strictly prohibited.**

(a) The Secretary of Administration shall compile and consolidate all estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where the total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such

other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for the articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for.

(b) Expired.

(c) Neither the Department of Administration nor any department, agency, or institution of the State may award a cost plus percentage of cost contract for any purpose, except as provided in G.S. 18C-150. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, ss. 2, 3; 1983, c. 717, s. 61; 1985 (Reg. Sess., 1986), c. 955, ss. 83-86; 1989 (Reg. Sess., 1990), c. 936, s. 3(a); 1997-412, s. 2; 1999-434, s. 12; 2006-203, s. 83; 2009-475, s. 1; 2010-194, s. 22; 2011-338, s. 3; 2013-234, s. 8.)

#### **§ 143-52.1. Award recommendations; State Purchasing Officer action.**

(a) Award Recommendation. – When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The State Purchasing Officer shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken.

(b) through (d) Repealed by Session Laws 2013-234, s. 4, effective July 3, 2013.

(e) Reporting. – The State Procurement Officer shall provide a monthly report of all contract awards greater than the benchmark established under G.S. 143-53.1 approved through the Division of Purchase and Contract to the Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award.

(1999-434, s. 13; 2001-487, s. 21(e); 2004-129, s. 41A; 2013-234, s. 4; 2020-78, s. 13.1(a); 2020-90, s. 1.1.)

§ 143-52.2: Repealed by Session Laws 2014-115, s. 11.1, effective August 11, 2014.

**§ 143-52.3. Multiple award schedule contracts.**

(a) Definitions. – The following definitions apply in this section:

- (1) Communications equipment. – Mobile communications systems, desktop communications systems, base and repeater communications systems, gateway devices, audio switch units, radio routers, microwave radios, microwave antennae, Ethernet switches, wireless access points, or equivalent products and attachments.
- (2) Construction equipment. – Excavators, wheel excavators, track loaders, compact track loaders, wheel loaders, skid steer loaders, backhoe loaders, crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes, compactors, and appropriate attachments, or equivalent products and attachments.
- (3) Forestry equipment. – Feller bunchers, knuckleboom loaders, forestry swing machines, harvesters, and appropriate attachments, or equivalent products and attachments.
- (4) Ground maintenance equipment. – Hand-held equipment, walk-behind products, lawn tractors, lawn and garden tractors, commercial walk-behind mowers, zero turn radius mowers, front mowers, compact utility tractors, utility tractors, utility vehicles, golf and turf equipment, agricultural tractors and implements, and appropriate attachments, or equivalent products and attachments.
- (5) Multiple award schedule contract. – A contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina.

(b) Intent. – The intent of multiple award schedule contracts is to evaluate vendors based upon a variety of factors, including discounts, total lifecycle costs, service, warranty, distribution channel, and past vendor performance. Multiple award schedule contracts allow multiple vendors to compete and be awarded a contract based upon the value of their products or services and result in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.

(c) Multiple Award Schedule Contracts Required. – The acquisition of ground maintenance equipment, construction equipment, communications equipment, and forestry equipment shall be conducted using multiple award schedule contracts, except as provided in this section. Not later than August 31, 2011, the Department of Administration shall issue requests for proposals for multiple award schedule contracts for all ground

maintenance equipment product categories, construction equipment product categories, communications equipment product categories, and forestry equipment product categories. Contracts awarded under this subsection shall be for a term of not less than three years with annual product and pricing update periods.

(d) **Limitation.** – Any contract awarded under subsection (c) of this section shall be in addition to any existing term contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment. Nothing in this section shall limit the ability of the Department of Administration to issue additional term contracts for the specific purchase of equipment otherwise available through a multiple award schedule contract. The Department of Public Safety shall not be required to purchase from contracts awarded under subsection (c) of this section for communications equipment. (2011-145, s. 19.1(g); 2011-360, s. 1.)

### **§ 143-53. Rules.**

- (a) The Secretary of Administration may adopt rules governing the following:
  - (1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at an amount that exceeds the benchmark established under G.S. 143-53.1. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract valued at or below the benchmark established under G.S. 143-53.1 by the agency that awarded the contract.
  - (2) **(See Editor's note)** Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1, 115D-58.14, or 116-31.10. The bid value benchmark for securing offers for each State department, institution, and agency established under the provisions of G.S. 143-53.1 shall be determined by the Director of the Division of Purchase and Contract following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the benchmark, or raise the benchmark upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.
  - (3) Repealed by Session Laws 2011-338, s. 4, effective July 1, 2011.

- (4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.
- (5) Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of goods and services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of goods and services is subject to prior review by the Secretary, if the expenditure exceeds the benchmark established under G.S. 143-53.1. The Division may levy a fee, not to exceed one dollar (\$1.00), for review of each waiver application.
- (6) Prescribing conditions under which partial, progressive and multiple awards may be made.
- (7) Prescribing conditions and procedures governing the purchase of used goods.
- (8) Providing conditions under which bids may be rejected in whole or in part.
- (9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.
- (10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.
- (11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.
- (12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

- (1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;
- (2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;
- (3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment,

- including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;
- (4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;
  - (5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and
  - (6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer.

(e) Expired June 30, 2012, pursuant to S.L. 2009-475, s. 16. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1; 1985 (Reg. Sess., 1986), c. 955, ss. 87, 88; 1987, c. 827, s. 216; 1989 (Reg. Sess., 1990), c. 936, s. 3(b); 1995, c. 256, s. 1; 1997-412, s. 3; 1998-217, s. 15; 1999-400, ss. 1, 2; 2002-107, s. 2; 2003-147, s. 9; 2004-203, s. 72(b); 2005-125, s. 1; 2006-203, s. 84; 2009-475, s. 2; 2011-338, s. 4; 2013-289, s. 7; 2020-78, s. 13.1(b); 2020-90, s. 1.2.)

### **§ 143-53.1. Setting of benchmarks; increase by Secretary.**

(a) On and after July 1, 2014, the procedures prescribed by G.S. 143-52 with respect to competitive bids and the bid value benchmark authorized by G.S. 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall promote compliance with the principles of procurement efficiency, transparency, and fair competition to obtain the State's business. For State departments, institutions, and agencies, except the President of The University of North Carolina or a special responsibility constituent institution of The University of North Carolina and community colleges, the benchmark shall not be greater than one hundred thousand dollars (\$100,000). For the



President of The University of North Carolina or a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section is as provided in G.S. 116-31.10. For community colleges, the benchmark prescribed in this section is as provided in G.S. 115D-58.14.

(b) Expired pursuant to Session Laws 2009-475, s. 16, effective June 30, 2012. (1989 (Reg. Sess., 1990), c. 936, s. 3(c); 1991, c. 689, s. 206.2(b); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(b); 1997-412, s. 4; 2009-475, s. 5; 2011-326, s. 18(a); 2013-289, s. 8; 2017-68, s. 4(b); 2020-78, s. 13.1(c); 2020-90, s. 1.3.)

**§ 143-54. Certification that bids were submitted without collusion.**

(a) The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification is a Class I felony.

(b) Expired. (1961, c. 963; 1971, c. 587, s. 1; 1993, c. 539, s. 1310; 1994, Ex. Sess., c. 24, s. 14(c); 2009-475, s. 6.)

**§ 143-55. Requisitioning by agencies; must purchase through sources certified.**

(a) Unless otherwise provided by law, where sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for purchases required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration.

(b) Expired. (1931, c. 261, s. 6; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 2006-264, s. 59(c); 2009-475, s. 7; 2011-338, s. 5.)

**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

- (1) Published books, manuscripts, maps, pamphlets and periodicals.
- (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for information technology purchased in accordance with Article 15 of Chapter 143B of the General Statutes, for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals, developmental centers, neuromedical treatment centers, and alcohol and drug abuse treatment centers through a competitive bidding purchasing program, as defined in G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient

care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 953; 1983, c. 717, ss. 65, 66; 1985, c. 145, s. 3; 1989 (Reg. Sess., 1990), c. 936, s. 3(e); 1998-212, s. 11.8(c); 1999-434, s. 14; 1999-456, s. 7; 2001-487, s. 21(f); 2009-184, s. 1; 2015-241, s. 7A.4(q).)

#### **§ 143-57. Purchases of articles in certain emergencies.**

In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. If the expenditure exceeds the benchmark established under G.S. 143-53.1, the report shall also be made promptly thereafter to the Division of Purchase and Contract. (1931, c. 261, s. 8; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1999-400, s. 3; 2020-78, s. 13.1(d); 2020-90, s. 1.4.)

#### **§ 143-57.1. Furniture requirements contracts.**

(a) State Furniture Requirements Contract. – To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

- (1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article. Bids shall be solicited on a historical weighted average of specific contract items and not on a single item within a class of items. Historical weighted average shall be based on information derived from the State's electronic procurement system, when available, or other available data.

- (2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.
  - (3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless three qualified vendors are not available. Additionally, if the State Purchasing Officer determines that there are no qualified vendors within the three best qualified vendors who offer furniture manufactured or produced in North Carolina or who are incorporated in the State, the State Purchasing Officer shall expand the number of qualified vendors awarded contracts to as many qualified vendors as is necessary to include a qualified vendor who offers furniture manufactured or produced in North Carolina or who is incorporated in the State, but the State Purchasing Officer shall not be required to expand the number of qualified vendors to more than six qualified vendors. A vendor is qualified under this subsection if the vendor's products conform to the term contract specifications and the vendor submits a responsive bid.
  - (4) Repealed by Session Laws 2013-73, s. 1, effective June 12, 2013.
- (a1) GSA Furniture Schedule. – Vendors meeting the following requirements are treated as qualified vendors under any State furniture requirements contract:
- (1) The vendor's products are included on a United States General Services Administration (GSA) Furniture Schedule.
  - (2) The vendor is a federally qualified vendor within the GSA Furniture Schedule.
  - (3) The vendor offers products on the same pricing and specifications as the vendor's products included on the GSA Furniture Schedule.
  - (4) The vendor is a resident bidder as defined in G.S. 143-59(c) or the vendor offers products manufactured or produced in North Carolina.
- (b) Definition. – For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items.
- (c) Authority to Purchase. – An agency may purchase from any vendor certified on the State furniture requirements contract, including vendors meeting the requirements of subsection (a1) of this section. An agency shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, contract terms, and other factors that it considers relevant. (1995, c. 136, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 716, s. 30; 2004-115, s. 1; 2013-73, s. 1; 2020-90, s. 1.5.)

**§ 143-58. Contracts contrary to provisions of Article made void.**

If any department, institution or agency of the State government, required by this Article and the rules adopted pursuant thereto applying to the purchase or lease of supplies, materials, equipment, printing or services through the Secretary of Administration, or any nonstate

institution, agency or instrumentality duly authorized or required to make purchases through the Department of Administration, shall contract for the purchase or lease of such supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules made hereunder, such contract shall be void and of no effect. If any such State or nonstate department, institution, agency or instrumentality purchases any supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules made hereunder, the executive officer of such department, institution, agency or instrumentality shall be personally liable for the costs thereof. (1931, c. 261, s. 9; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1977, c. 148, s. 3; 1987, c. 827, s. 217.)

**§ 143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.**

(a) It shall be unlawful for any person, by the use of the powers, policies or procedures described in this Article or established hereunder, to purchase, attempt to purchase, procure or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

- (1) The department, institution or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution or agency involved, or the public benefit or convenience; and
- (2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Article or established thereunder.

(c) A violation of this section is a Class 1 misdemeanor. (1983, c. 409; 1993, c. 539, s. 1004; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 143-58.2. State policy; bid procedures and specifications; identification of products.**

(a) It is the policy of this State to encourage and promote the purchase of products with recycled content. All State departments, institutions, agencies, community colleges, and local school administrative units shall, to the extent economically practicable, purchase and use, or require the purchase and use of, products with recycled content.

(b) No later than January 1, 1995, the Secretary of Administration and each State department, institution, agency, community college, and local school administrative unit authorized to purchase materials and supplies or to contract for services shall review and revise its bid procedures and specifications for the purchase or use of materials and supplies to eliminate any procedures and specifications that explicitly discriminate against materials and supplies with recycled content, except where procedures and specifications are necessary to protect the health, safety, and welfare of the citizens of this State.

(c) The Secretary of Administration and each State department, institution, agency, community college, and local school administrative unit shall review and revise its bid procedures and specifications on a continuing basis to encourage the purchase or use of materials and supplies with recycled content and to the extent economically practicable, the use of materials and supplies with recycled content.

(d) The Department of Administration, in cooperation with the Division of Environmental Assistance and Outreach of the Department of Environmental Quality, shall

identify materials and supplies with recycled content that meet appropriate standards for use by State departments, institutions, agencies, community colleges, and local school administrative units.

(e) A list of materials and supplies with recycled content that are identified pursuant to subsection (d) of this section and that are available for purchase under a statewide term contract shall be distributed annually to each State agency authorized to purchase materials and supplies for use by its departments, institutions, agencies, community colleges, or local school administrative units.

(f) Repealed by Session Laws 2009-484, s. 15, effective January 1, 2010.

(g) The Department of Administration and the Department of Environmental Quality shall develop guidelines for minimum content standards for materials and supplies with recycled content and may recommend appropriate goals in addition to those goals set forth in G.S. 143-58.3, for types of materials and supplies with recycled content to be purchased by the State.

(h) The Secretary of Administration may adopt rules to implement the provisions of this section and G.S. 143-58.3. (1993, c. 256, s. 2; 1995 (Reg. Sess., 1996), c. 743, ss. 10, 11; 1997-443, s. 11A.119(a); 2001-452, s. 3.7; 2009-484, s. 15; 2010-31, s. 13.1(f); 2015-241, s. 14.30(u).)

#### **§ 143-58.3. Purchase of recycled paper and paper products; goals.**

In furtherance of the State policy, it is the goal of the State that each department, institution, agency, community college, and local school administrative unit purchase paper and paper products with recycled content according to the following schedule:

- (1) At least ten percent (10%) by June 30, 1994;
- (2) At least twenty percent (20%) by June 30, 1995;
- (3) At least thirty-five percent (35%) by June 30, 1996; and
- (4) At least fifty percent (50%) by June 30, 1997, and the end of each subsequent fiscal year,

of the total amount spent for the purchase of paper and paper products during that fiscal year. (1993, c. 256, s. 2.)

#### **§ 143-58.4. Energy credit banking and selling program.**

(a) The following definitions apply in this section:

- (1) AFV. – A hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.
- (2) Alternative fuel. – Biodiesel, biodiesel blend, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.
- (3) B-20. – A blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.
- (3a) Biodiesel. – A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100 and meeting

the requirements of the American Society for Testing and Materials (ASTM) D-6751.

- (3b) Biodiesel blend. – A blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX where XX represents the percentage of volume of fuel in the blend meeting the requirements of ASTM D-6751.
- (4) Department. – The Department of Environmental Quality.
- (5) Energy Policy Act. – The federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.
- (6) EAct credit. – A credit issued pursuant to the Energy Policy Act.
- (7) E-85. – A blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.
- (8) Incremental fuel cost. – The difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.
- (9) Incremental vehicle cost. – The difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.

(b) Establish Program. – The State Energy Office of the Department, in cooperation with State departments, institutions, and agencies, shall establish and administer an energy credit banking and selling program to allow State departments, institutions, and agencies to use moneys generated by the sale of EAct credits to purchase alternative fuel, develop alternative fuel refueling infrastructure, and purchase AFVs for use by State departments, institutions, and agencies. Each State department, institution, and agency shall provide the State Energy Office with all vehicle fleet information necessary to determine the number of EAct credits generated annually by the State. The State Energy Office may sell credits in any manner that is in accordance with the provisions of the Energy Policy Act.

(c) Adopt Rules. – The Secretary of Environmental Quality shall adopt rules as necessary to implement this section. (2005-413, s. 1; 2009-237, s. 1; 2009-446, s. 1(g), (h); 2013-360, s. 15.22(n); 2015-241, s. 14.30(u), (v).)

#### **§ 143-58.5. Alternative Fuel Revolving Fund.**

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EAct credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases. To the extent possible, benefits from the sale of EAct credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EAct credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert.

The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Environmental Quality shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than October 1 of each year a report on the expenditures from the Fund during the preceding fiscal year. (2005-413, s. 1; 2009-237, s. 2; 2017-57, s. 14.1(a); 2017-102, s. 20.1(a).)

#### **§ 143-58.6. Specifications for use of coal combustion products.**

(a) State Construction Office to Develop Technical Specifications. – The State Construction Office shall develop recommended technical specifications for the use of coal combustion products that may be utilized in any construction by all State departments, institutions, agencies, community colleges, and local school administrative units, other than the Department of Transportation. The technical specifications shall address all products used in construction, including, but not limited to, the use of coal combustion products in concrete and cement products and in construction fill.

(b) Department of Transportation to Develop Technical Specifications. – The Department of Transportation shall develop recommended technical specifications for the use of coal combustion products that may be utilized in any construction by the Department of Transportation. The technical specifications shall address all products used in construction, including, but not limited to, the use of coal combustion products in concrete and cement products and in construction fill.

(c) Specification Factors. – The State Construction Office and the Department of Transportation shall consider safety, best practice engineering standards, quality, cost, and availability of an in-State source of coal combustion products in developing the recommended technical specifications pursuant to this section.

(d) Consultation. – The State Construction Office and the Department of Transportation shall consult with each other in the development of the recommended technical specifications pursuant to the provisions of this section in order to ensure that the recommended technical standards are uniform for similar types of construction. The goal of the Department of Administration and the Department of Transportation shall be to increase the usage and consumption of coal combustion products in their respective construction projects.

(e) Report of Recommended Specifications. – The State Construction Office and the Department of Transportation shall report the recommended technical specifications developed pursuant to this section to the Environmental Review Commission and the Joint

Legislative Transportation Oversight Committee on or before February 1, 2015. (2014-122, s. 16.)

**§ 143-58.7. Contracts with Conservation Corps North Carolina.**

State departments, institutions, and agencies may contract with the Conservation Corps North Carolina to perform trail construction and maintenance, invasive species removal, and other conservation projects in State parks, State forests, and other State-owned facilities where the projects provide direct public benefits to the citizens of the State and offer youth and young adults of the State a structured program that connects them to natural resources and teaches job skills, leadership, community service, and personal responsibility. Contracts under this section are exempt from the competitive bidding procedures described in this Article and the rules adopted under it. (2017-57, s. 14.12; 2019-138, s. 3.)

**§ 143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies; reciprocal preferences.**

(a) Preference. – The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution.

(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration shall consider factors that include competition, price, product origination, and available resources.

(c) Definitions. – The following definitions apply in this section:

- (1) Resident bidder. – A bidder that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State.



- (2) Nonresident bidder. – A bidder that is not a resident bidder as defined in subdivision (1) of this subsection.
- (3) Principal place of business. – The principal place from which the trade or business of the bidder is directed or managed.
- (d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into under G.S. 143-53(a)(5) or G.S. 143-57.
- (e) When a contract is awarded by the Secretary using the provisions of subsection (b) of this section, a report of the nature of the contract, the bids received, and the award to the successful bidder shall be posted on the Internet as soon as practicable.
- (f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 2001-240, s. 1; 2005-213, ss. 1, 3; 2013-234, s. 9.)

#### **§ 143-59.1. Contracts with certain foreign vendors.**

- (a) Ineligible Vendors. – The Secretary of Administration, State Chief Information Officer, and other entities to which this Article applies shall not contract for goods or services with either of the following:
  - (1) A vendor if the vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.
  - (2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.
- (c) Definitions. – The following definitions apply in this section:
  - (1) Affiliate. – As defined in G.S. 105-163.010.
  - (2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Gibraltar, Isle of Man, the Principality of Monaco, and the Republic of the Seychelles. (1999-341, s. 7; 2002-189, s. 6; 2003-413, s. 28; 2012-79, s. 2.14; 2015-241, s. 7A.4(r).)

**§ 143-59.1A. Preference given to products made in United States.**

If the Secretary of Administration or a State agency cannot give preference to North Carolina products or services as provided in G.S. 143-59, the Secretary or State agency shall give preference, as far as may be practicable and to the extent permitted by State law, federal law, and federal treaty, to products or services manufactured or produced in the United States. Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution. (2004-124, s. 6.1.)

**§ 143-59.2. Certain vendors prohibited from contracting with State.**

(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business entity, within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violation referenced in subsection (a) of this section within 10 years immediately prior to the date of the bid solicitation. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Void Contracts. – A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Secretary of Administration. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare. (2002-189, s. 5.)

**§ 143-59.3. Contracts for the purchase of reconstituted or recombined fluid milk products prohibited.**

(a) As used in this section, "fluid milk product" has the same meaning as in 7 Code of Federal Regulations § 1000.15 (1 January 2003 Edition).

(b) No department, institution, or agency of the State shall enter into any contract for the purchase of any fluid milk product that is labeled or that is required to be labeled as "reconstituted" or "recombined".

(c) The Secretary of Administration may temporarily suspend the provisions of subsection (b) of this section in case of any emergency or pressing need as provided in G.S. 143-57. (2003-367, s. 1.)

**§ 143-59.4. Contracts performed outside the United States.**

(a) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts, and whether any services under that contract, including any subcontracts, are

anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(b) The Secretary of Administration shall retain the statements required by subsection (a) of this section regardless of the State entity that awards the contract and shall report annually to the Joint Legislative Commission on Governmental Operations on the number of contracts which are anticipated to be performed outside the United States. (2005-169, s. 1.)

#### **§ 143-60. Rules covering certain purposes.**

The Secretary of Administration may adopt, modify, or abrogate rules covering the following purposes, in addition to those authorized elsewhere in this Article:

- (1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
- (2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
- (3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications. However, the provisions of this subdivision shall not apply to the constituent institutions of The University of North Carolina. The President of The University of North Carolina shall issue regulations or guidelines for the conducting of quality inspections by constituent institutions to ensure that deliveries have been made in compliance with specifications.
- (4) Prescribing the manner in which purchases shall be made in emergencies.
- (5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.
- (6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 268, s. 2; 1983, c. 717, ss. 67, 68; 1985 (Reg. Sess., 1986), c. 955, ss. 89, 90; 1987, c. 282, s. 27; c. 827, s. 217; 2006-203, s. 85; 2011-145, s. 9.6G(a).)

#### **§ 143-61. Repealed by Session Laws 1975, c. 879, s. 45.**

#### **§ 143-62. Law applicable to printing Supreme Court Reports not affected.**

Nothing in this Article shall be construed as amending or repealing G.S. 7A-6(b), relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13; 1969, c. 44, s. 75; 1971, c. 587, s. 1.)

#### **§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes.**

Neither the Secretary of Administration, nor any assistant of the Secretary's shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a Class F felony. Upon conviction thereof, any such Secretary or assistant shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 717, s. 81; 1993, c. 539, s. 1311; 1994, Ex. Sess., c. 24, s. 14(c); 2006-203, s. 86.)

**§ 143-63.1. Sale, disposal and destruction of firearms.**

(a) Except as hereinafter provided, it shall be unlawful for any employee, officer or official of the State in the exercise of his official duty to sell or otherwise dispose of any pistol, revolver, shotgun or rifle to any person, firm, corporation, county or local governmental unit, law-enforcement agency, or other legal entity.

(b) It shall be lawful for the Department of Administration, in the exercise of its official duty, to sell any weapon described in subsection (a) hereof, to any county or local governmental unit, law-enforcement agency in the State; provided, however, that such law-enforcement agency files a written statement, duly notarized, with the seller of said weapon certifying that such weapon is needed in law enforcement by such law-enforcement agency.

(c) All weapons described in subsection (a) hereof which are not sold as herein provided within one year of being declared surplus property shall be destroyed by the Department of Administration.

(d) Notwithstanding the provisions of this section, but subject to the provisions of G.S. 20-187.2, the North Carolina State Highway Patrol, the North Carolina Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the Alcohol Law Enforcement Division of the Department of Public Safety, and the North Carolina State Bureau of Investigation may sell, trade, or otherwise dispose of any or all surplus weapons they possess to any federally licensed firearm dealers. The sale, trade, or disposal of these weapons shall be in a manner prescribed by the Department of Administration. Any moneys or property obtained from the sale, trade, or disposal shall go to the general fund. (1973, c. 666, ss. 1-3; 1975, c. 879, s. 46; 1981, c. 604; 1981 (Reg. Sess., 1982), c. 1282, s. 52; 2011-145, s. 19.1(h); 2017-186, s. 2(zzzzz); 2019-203, s. 10.)

**§ 143-63.2. Purchase of tires for State vehicles; repair or refurbishment of tires for State vehicles.**

(a) Definitions. – The following terms apply in this section:

(1) Critical tire information. – Tire brand name, tire line name, tire identification numbers, load and pressure markings, tire size designation, service descriptions such as load and speed ratings, and other information

and specifications placed on the original tire sidewall by the original tire manufacturer.

- (2) State vehicle. – Any vehicle owned, rented, or leased by the State, or an institution, department, or agency of the State, that is driven on a public road consistently at speeds greater than 30 miles per hour.

(b) Forensic Tire Standards. – In order to preserve critical tire information, the Secretary of Administration and any institution, department, or agency of the State shall only procure and install tires for State vehicles that possess the original, unaltered, and uncovered tire sidewall. Furthermore, neither the Secretary of Administration nor any institution, department, or agency of the State shall execute a contract for the repair or refurbishment of tires for State vehicles that provides for the removal, covering, or other alteration in any manner of the critical tire information contained on the original tire sidewall.

(c) Tire Purchase and Contract Standards Applicability. – All contracts for the purchase, repair, or refurbishment of tires for State vehicles, or contracts for the purchase of products or services related to the repair or refurbishment of tires for State vehicles, executed on or after the date this section becomes effective shall comply with the provisions of this section.

(d) Exemption. – Notwithstanding the provisions of this section, the State or any institution, department, or agency of the State that owns or has a legally binding contract in place for the future purchase of tires having altered or covered sidewalls prior to the date that this section becomes effective shall perform its existing contractual obligations related thereto and may continue to use those tires on State vehicles for the useful life of the retreaded tire. (2011-145, s. 28.36(a).)

**§ 143-64:** Repealed by Session Laws 2012-89, s. 1, effective June 28, 2012.